

**Consideration of paragliding petition, Alan Abair Petition for Rule Change,
Administrative Cause Number 09-161L**

Introduction to the issue:

Location:

The Division of Fish and Wildlife manages a public access site at Lake Wawasee in Kosciusko County near Syracuse. The site contains approximately six acres of land with a public boat access ramp, public fishing piers, and public parking. The District 1 DNR Law Enforcement office is also on the property. The six acre parcel is divided by Turkey Creek Road.

Conflict:

On or about July 23, 2009 it was observed that a group was using the Wawasee public access site to launch and land paragliding apparatus. This involved a boat towing individuals by means of a cable attached to the glider. The cable extended from the boat, through the water, and across the access site approximately 200 feet to a location near the smallest of two parking lots on the property. Upon towing the glider it became airborne, gained altitude, and was eventually detached from the cable, maneuvered through the air, and returned and landed on the Wawasee public access site.

Upon observance of the activity F/Sgt. Hines approached the participants and discussed the activity with individuals including a Mr. Alan Abair. F/Sgt. Hines contacted Steve Roth, the Division of Fish and Wildlife manager responsible for the property who, in turn, had conversations with other Division of Fish and Wildlife employees including James Kershaw, Public Access Program Supervisor, who then involved Director Mark Reiter. The consensus was that this type of activity is prohibited on sites such as the Lake Wawasee public access site without special approval.

Over the course of the next three days individuals continued to use the site for paragliding activities and were asked to discontinue their activities by Officer Ashlee Jackson. On July 26, 2009, F/Sgt. Hines was contacted by telephone by a Mr. Marcello Debarrol of California, USA. Mr. Debarrol advised of the intent of him and his associates to sue for being restricted use of the access site. Debarrol advised he traveled from California for the opportunity and asked to be allowed to continue through Sunday afternoon. F/Sgt. Hines advised of the need for a special use permit and also advised Mr. Debarrol of information needed if he was to pursue his legal suit.

During the week of September 21, 2009, F/Sgt. Hines was advised by Mr. Abair of his intent to pursue regulation changes to use the Wawasee public access site for Paragliding activities. Mr. Abair advised that they use a property called Mt. Baldy on Lake Michigan. Mt. Baldy is part of the National Lakeshore property.

Petition:

On September 23, 2009, Alan Abair filed a petition with the Natural Resources Commission that stated a desire for an amendment 312 IAC 8-2-9. Abairs's petition was discussed informally on September 29 by the DNR property rules committee. Based upon recommendations from the committee, Director Rob Carter formed a committee to review the petition. Maj. Steve Hunter was appointed chair, and John Bergman and Bill Bean were appointed members. The review was identified as "Paragliding on Public Waters" (Administrative Cause No. 09-161L).

Definitions:

It will serve some purpose to first define some of the terms that have been used interchangeably by Department employees throughout this event. There are various "para" prefix terms and other terms involving, in part, the words "sailing, gliding, tubing, and kiting" that may or may not have connection to Mr. Abair's petition. For the sake of understanding they are discussed briefly below:

Board Sailing; Boardsailing does not involve the use of a boat or other accessory towing apparatus. A simple description is that a surf board type object is equipped with a sailboat type apparatus and is used to travel about the water by, normally, one occupant on the device. A DNR policy dated June 1988 exists outlining the differences of board sail requirements and boat requirements. Boardsailing, windsurfing, sail boarding are used interchangeably in some circles. There is also a sport know as Kite boarding that uses a kite type apparatus to pull a person on a surf board type device. These devices have limited similarity to the devices mentioned in Mr. Abair's petition as they do not become airborne and do not utilize a towing motorboat.

There are three types of apparatus that have similarity to the apparatus used by Mr. Abair. Tube Kites, Tow Kites (AKA Parasail), and Paragliders. All are similar in that they are, or can be, pulled by a motorboat in order to create wind resistance for proper function much the same way a standard recreational tube or skier is pulled behind a boat.

Least similar of the three is Tube Kites which, incidentally, were banned on Army Corp of Engineer reservoirs in the Midwest in the summer of 2009. These devices are large (10' diameter) inflatable tubes that are pulled at speeds ranging from 10 to 35 mph. The occupant of the device assists it in becoming airborne by pulling upward on the tow rope as the device is being pulled by the motorboat. The upward pull creates a pocket between the device and the water that catches and forces air between the tube and the water causing the device to become airborne for short periods of time. Injuries were sustained when the inevitable hard impact with the water occurred or when the tube, being difficult to control, flipped or struck hard objects including bridges, other boats or the tow boat.

Parasail apparatus are similar to Mr. Abair's petition devices but different in that they are not designed to be disconnected from the towing motorboat during use. The term Tow Kite is a term used interchangeably with parasail and probably better gives a verbal image of what the devices actually are. The devices are designed to become and remain

airborne during the entire operation but require a motorboat to create wind resistance to keep the kite and occupant up.

Paragliders are also, or can be, towed by a motorboat to create wind resistance to become airborne. They are similar to a parasail in that they are also designed to remain airborne but different in that they are designed to be disconnected from the towing craft at some point and remain airborne of their own design. Mr. Abair reports that it is possible to travel several miles if the wind forces are cooperative. These devices have similarity to hang gliders.

Abair's request:

In a telephone discussion with Mr. Abair I was able to ascertain that the only location he was concerned about was the Wawasee Public Access site. Mr. Abair advised that when wind conditions are right the access site provides an ideal environment for paragliding activities and that the lake's scenery does a great deal to enhance the experience. Additionally it was explained that there is an advantage to conducting some training exercises over water since it would provide a safe landing location should a technique not be performed properly causing the paraglider to fail. Mr. Abair did not express any interest in sites other than the site in question.

Laws:

Indiana boating statutes apply to Lake Wawasee. Some of these restrictions would be the requirement of an observer in the motorboat while an object is being towed, shoreline speed restriction of idle speed, night time speed of 10mph, and a personal floatation device requirement. These statutes would apply to a tow kite, parasail, or any similar object being towed by a boat.

312 IAC 8 applies only to a "DNR property", a definition from which any "public freshwater lake" is specifically excepted. Lake Wawasee is a public freshwater lake and not governed by 312 IAC 8. 312 IAC 8-2-9 applies to swimming, snorkeling, scuba diving, and tow kite flying on a DNR property. With respect to tow kite flying, this section provides in subsection (d):

(d) A person must not engage in tow kite flying, except during the following periods:

(1) On weekdays from sunrise to sunset.

(2) Except as provided in subdivision (3), on Saturdays, Sundays, or holidays, from sunrise until 11 a.m. and from 5 p.m. until sunset.

(3) On:

(A) Memorial Day weekend;

(B) the Fourth of July and a Saturday or Sunday that immediately precedes or follows the Fourth of July; and

(C) Labor Day Weekend;

from sunrise until 11 a.m.

To the extent 312 IAC 8-2-9 has any potential application, it is to tow kite flying within the limits of the Wawasee Public Access Site but not to Lake Wawasee. Paragliding is not specifically addressed in 312 IAC 8, and the committee believes to consider engaging in paragliding activity at Wawasee Public Access Site, Abair would need to request and be issued a special use permit. Special use permits are governed by 312 IAC 8-2-5.

The committee has serious reservations as to whether the Wawasee Public Access Site is an appropriate site to designate for paragliding. There is a likelihood of conflict with other users on what is often a heavily used facility. Paragliding is also likely to conflict with restrictions resulting from the Federal funding which was used to acquire this Fish and Wildlife site.

The Division of Fish and Wildlife is believed to be the entity that would appropriately review and take agency action on any application by Mr. Abair for a special use permit. If Mr. Abair were dissatisfied with the Division of Fish and Wildlife's action, he could appeal to the Commission's Division of Hearings and subsequently the Commission's AOPA Committee.

The Department might be served by receiving clarity as to definitions for "boardsailing", "kite boarding", "tube kites", "tow kites" (AKA "parasails") and "paragliders", as well as describing what types of DNR properties may be appropriate for these activities. This clarity could be achieved through rule adoption.

Steve Hunter, Major,
Division of Law Enforcement

John Bergman, Assistant Director,
Division of State Parks and Reservoirs

William Bean, North Public Lands Supervisor,
Division of Fish and Wildlife

Lucas, Steve

From: Alan Abair [aabair99@yahoo.com]

Sent: Wednesday, September 23, 2009 12:46 AM

To: Lucas, Steve

Subject: Re; Redesignating the boat Launch area for paragliding activities at Lake Wawasee

Administrative Cause
Number: 09-161L

Mr Stephen Lucas

Let me introduce myself, I am Alan Abair and live at 8960 E Hatchery Road, Syracuse In 46567. I am trying to get the rule number 312 IRC 8-2-9 amended or redesignated to allow paragliders to be launched and landed at the park at the boat launch area at south end of Lake Wawasee. I and friends have been towing up there for almost a year without any problems and I am member of USHGPA. Have a P 4 rating. This is not the same as a hanglider and flies much slower with no hard parts in its design. I would like to get the same rules as at Mt Baldy requiring a P rating, which comes with Million dollar liability insurance policy for each member. We would be glad to pay a yearly fee as they do in Mt Baldy which is 25 dollars which would help cover the extra work to check and hand out these permits. Would follow the same rules as stated in the kite towing part of your rules which lets towing be done between sunrise and sunset weekdays and from sunrise to 10am and 5pm to sunset. This we have been doing because traffic and waves on lake makes it very rough and hard on the boat and tow operators. We understand that holidays would be busy also and would not tow during the 10 am to 5 pm window on those days when the lake is really busy and too rough to tow comfortably. . So all in all I want to ask you to consider amending the rules to allow the safe towing of paragliders from this park. With the requirements mentioned here.

USHGPA rating of P1 or higher

Towing only on weekdays from sunset to sunrise

Towing on weekends and holidays only before 10 am and after 5 pm.

Yearly fee of 25.00 for the permit to be able to use this site.

I hope you can help me with this. The people here at the lake and neighbors here at the condos are asking me when they will be able to see it again. They say they really enjoy the show. People even would bring lunch set and watch were asking when we were going up. We have always respected the others using the park and have as the park custodians can tell you kept it clean and neat. I thank you for your time in this matter and hope the news is good news. My cell number is 574 453 6252 if you would like to speak to me. There is a full page article in the Mail Journal I can send you a link to the site it is located at. It is a beautiful park and would not do anything to ruin it or our reputation that is around the country of how safe we have done this in the past and now would like to do it with the blessing of your agency as long as we keep the rules.

Thanks again and hope to hear from you soon.

Regards

Alan A Abair

9/23/2009

EXHIBIT

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